



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE

§

No. 08-21-00229-CV

PETER ARTHUR FIERRO
a/k/a ART FIERRO,

§

AN ORIGINAL PROCEEDING

§

IN MANDAMUS

Relator.

§

OPINION

This is a mandamus action invoking this Court's original supervisory mandamus jurisdiction over elections and political party officers. Relator, Art Fierro, candidate for state representative for the Texas House of Representatives, District 79 (HD 79), contends Respondent Dora Oaxaca, chair of the El Paso County Democratic Party, is violating a ministerial duty to declare his opponent, Claudia Ordaz Perez, ineligible to run for House District 79. Fierro contends Ordaz Perez has failed to meet two residency requirements: (1) a constitutional requirement she has resided within House District 79 at least one year prior to the November 8, 2022 general election; and (2) an Election Code requirement she has resided within House District 79 for at least six months prior to the December 13, 2021, deadline to file to run in the March 2022 Democratic Primary.

We conclude Ordaz Perez satisfied the constitutional residency requirement to run for

House District 79, and the Election Code provision Fierro cites as an alternative basis for ineligibility does not apply to the office of state representative. Consequently, Chair Oaxaca did not err by declining to remove Ordaz Perez’s name from the ballot at Fierro’s request.

The writ of mandamus is denied.

I. BACKGROUND

A. Residency

On October 12, 2021, Ordaz Perez filed a voter registration change-of-address form with the El Paso County Elections Department indicating she had changed her residence from an address on Londonderry Road in then-House District 76¹ to an address on David Carrasco Drive in House District 79. On December 13, 2021, Ordaz Perez timely submitted a candidate application to run for the state representative of House District 79 in the Democratic Primary. In her December 13th candidate application, for the office she was seeking, Ordaz Perez swore she resided in the district for “2 months.”

B. Proceedings before the El Paso Democratic Party Chair

On December 14, 2021, Fierro sent a written objection to Ordaz Perez’s candidacy to Chair Oaxaca, contending:

- Ordaz Perez was ineligible to run for HD 79 because the Texas Constitution required her to have taken up residence in-district within a year of the November 8, 2022,

¹ In 2019, Fierro assumed office as the state representative for House District 79. Ordaz Perez began her term as the state representative for House District 76 in early 2021. On October 15, 2021, during a special legislative session, the Texas Legislature approved a redistricting plan for the Texas House of Representatives that, in relevant part, merged House District 76 into House District 77. See James Barragan and Alexa Ura, *Lawmakers send to Gov. Greg Abbott new political maps that would further solidify the GOP’s grip on the Texas Legislature*, TEXAS TRIBUNE (Oct. 15, 2021), <https://www.texastribune.org/2021/10/15/texas-legislature-redistricting/>; Patrick Svitek, *Democratic state Reps. Claudia Ordaz Perez and Art Fierro will vie for the same El Paso House seat due to redistricting*, TEXAS TRIBUNE (Nov. 1, 2021), <https://www.texastribune.org/2021/11/01/texas-house-el-paso-redistricting/>.

general election date, *see* TEX.CONST. art. III, § 7, and since her change-of-address form was not effective for 30 days under TEX.ELEC.CODE ANN. § 15.025 (a), her official date of residency was actually November 12, 2021, which caused her to be several days short of the constitutional deadline (November 8, 2021); and

- Ordaz Perez was ineligible to run for HD 79 because the Election Code required her to reside in-district for at least six months prior to the December 13, 2021, filing deadline for the Democratic Primary election, *see* TEX.ELEC.CODE ANN. § 141.001(a)(5)(A), (a)(6) and her candidate application affirmatively showed she had only resided in-district for two months as of the filing deadline date.

On December 16, 2021, Chair Oaxaca sent an email to Fierro rejecting his request to have Ordaz Perez declared ineligible. In the email, Chair Oaxaca stated Ordaz Perez:

. . . meets all candidate qualifications for public office and all requirements for a place on the 2022 General Democratic Primary ballot, as per Texas Constitution, Article 3, Section 7. Ordaz Perez has attested her residency in the territory for which she is seeking public office for a period of two months, at date of application. Therefore, she will meet the twelve-month requirement of residency before the November 8, 2022, General Election.

Although Chair Oaxaca's email specifically referenced the Texas Constitution's residency requirement, Chair Oaxaca's email did not specifically address the Election Code's six-month residency requirement issue.

On December 30, 2021, Fierro filed this mandamus action. We granted his request for an expedited decision in light of an alleged upcoming ballot finalization deadline on January 12, 2021, and requested responses from both Chair Oaxaca and Ordaz Perez.

II. DISCUSSION

A. *Standard of Review and Applicable Law*

We possess original jurisdiction to issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer. TEX.ELEC.CODE ANN. § 273.061.

A writ of mandamus from the court of appeals may only issue to compel an election official to perform ministerial acts, or to correct a clear abuse of discretion by an election official. *In re Dominguez*, 621 S.W.3d 899, 904-907 (Tex.App.—El Paso 2021, orig. proceeding). An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion. *Id.* An otherwise discretionary act becomes ministerial when the facts and circumstances dictate but one rational decision. *In re Flores*, No. 08-06-00079-CR, 2006 WL 958597, at *1 (Tex.App.—El Paso Apr. 13, 2006, orig. proceeding)(not designated for publication).

To obtain the writ, a relator bears the burden of showing he has a clear legal right to the performance of the act he seeks to compel, and the duty of the officer sought to be compelled must be one clearly fixed and required by the law. *In re Cercone*, 323 S.W.3d at 293, 295 (Tex.App.—Dallas 2010, orig. proceeding). In addition to showing an election official has a legal duty to perform a non-discretionary act, a relator must also show he has made a demand for performance on the election official and the election official has refused to perform. *Id.* at 297.

Sections of the Election Code addressing candidacy for political office are mandatory and must be strictly enforced, when applicable, and election officials have a ministerial duty to declare a candidate ineligible if presented with public records conclusively showing a candidate is

ineligible. *In re Walker*, 595 S.W.3d 841, 842-43 (Tex.App.—Houston [14th Dist.] 2020, orig. proceeding). In reviewing the propriety of administrative action taken by an election official, we may only grant mandamus if the relator can show us both that the election official respondent had no choice but to administratively declare a candidate ineligible based on the evidence presented to that election official, and the election official has nevertheless refused to declare the candidate ineligible. *In re Cullar*, 320 S.W.3d 560, 566 (Tex.App.—Dallas 2010, orig. proceeding). A candidate may be declared ineligible only if (1) the information on the candidate’s application for a place on the ballot indicates the candidate is ineligible for the office, or (2) facts indicating the candidate is ineligible is conclusively established by another public record. TEX.ELEC.CODE ANN. § 145.003(f)(1)-(2).

B. Analysis

Fierro argues Chair Oaxaca has a ministerial duty to declare Ordaz Perez ineligible to run for HD 79 by failing to meet two separate residency requirements. We address each requirement in turn.

1. Constitutional Eligibility Requirements

First, Fierro maintains Ordaz Perez is ineligible to run for HD 79 as per the Texas Constitution, which requires a state representative to reside within the district of election for at least one year prior to the date of the general election. *See* TEX.CONST. art. III, § 7. In support of his claim, Fierro points to the date on Ordaz Perez’s voter registration change-of-address form filed with the El Paso County Election Department and argues although Ordaz Perez filed the form on October 12, 2021, her change of address was not effective until 30 days later, November 11, 2021, which renders her several days short of the one-year constitutional residency deadline of November 8, 2021. We disagree.

Article III, section 7 of the Texas Constitution sets out the constitutional qualifications for a representative in the Texas House of Representatives. Specifically:

No person shall be a Representative, unless he be a citizen of the United States, and, ***at the time of his election***, a qualified voter of this State, and ***shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen***, and shall have attained the age of twenty-one years.

TEX.CONST. art. III, § 7 (emphasis added).

A candidate meets the eligibility requirement and is entitled to be placed on the primary ballot if she “will have met that [one-year] time requirement by the date of the general election in November[.]” *Chapa v. Whittle*, 536 S.W.2d 681, 684 (Tex.App.—Corpus Christi 1976, orig. proceeding); *accord McClelland v. Sharp*, 430 S.W.2d 518, 520 (Tex.App.—Houston [14th Dist.] 1968, orig. proceeding)(measuring constitutional residency period for state representative candidate from the date of the November general election). The 2022 General Election date is November 8, 2022, meaning any candidate for HD 79 must have resided within the district for one year immediately preceding the general election date. Therefore, here, an eligible candidate must establish residency in-district no later than November 8, 2021. We consider a candidate’s application and other public records to determine whether the party chair abused their discretion by declaring a particular candidate eligible or ineligible to run. *See* TEX.ELEC.CODE ANN. § 145.003(f)(1)-(2).

Ordaz Perez attested in her December 13, 2021, candidate application she has resided in-district for two months, which would place her beginning date of residency at October 13, 2021—before the November 8, 2021 constitutional deadline. Her candidate application reflects she meets the prima facie requirements to run for HD 79 under the Texas Constitution. To have her administratively ejected from the ballot when a candidate’s application on its face shows she is

eligible to run, Fierro must demonstrate facts showing she is ineligible and conclusively established by another public record. *In re Dominguez*, 621 S.W.3d at 905.

Fierro proffers the change-of-address form electronically filed on October 12, 2021, as proof of her ineligibility. However, this record only bolsters Ordaz Perez’s claim she resided in-district by the constitutional deadline since it is an additional public record in which Ordaz Perez attests to living within the boundaries of HD 79 as of October 2021. Fierro insists, on the contrary, this record conclusively establishes Ordaz Perez did *not* live in-district by the constitutional deadline. Under TEX.ELEC.CODE ANN. § 15.025, it takes 30 days for a change-of-address form to be effective for voter registration purposes. Fierro posits Ordaz Perez is ineligible because the “effective date” of her residence would be November 12, 2021, four days after the constitutional deadline.

However, Fierro improperly conflates two distinct inquiries to arrive at this conclusion. The 30-day delay in change-of-address effectiveness goes to the question of whether a candidate timely updated their voter registration information, which is an additional standalone requirement for some candidates to be eligible to run. *See* TEX.ELEC.CODE ANN. § 141.001(a)(5), (a)(6)(requiring a candidate’s voter registration to be effective at least six months before the primary filing deadline). The inquiry whether a candidate updated their voter registration information on time is separate and distinct from the inquiry whether a candidate has in-fact resided within the requisite territory for a given period. *In re Perez*, 508 S.W.3d 500, 507-08 (Tex.App.—El Paso 2016, orig. proceeding)(treating residency and timely voter registration as separate inquiries).

We have previously held a voter registration change-of-address card can be sufficient to conclusively show ineligibility, that is, timely registration may be grounds for ineligibility. *See id.*

(change-of-address submitted seven days before primary filing deadline was not effective until after primary deadline had passed). However, we have never held an additional 30 days is required to determine an “effective date” for residency purposes based on an executed voter registration change-of-address form. On the contrary, we have treated the date on a change-of-address form at face value for residency purposes absent mandamus record evidence to the contrary. *See id.* (recognizing change-of-address card date supported one of two equally plausible inferences regarding residency: either the candidate became an in-district resident on that date, or the candidate became an in-district resident before that date but belatedly updated their voter registration information).

We find the date on Ordaz Perez’s change-of-address form is consistent with the date on her candidate application. Fierro has not provided any evidence contravening Ordaz Perez’s attestation in her candidate application that she resided in-district beginning on or about October 13, 2021. We conclude Chair Oaxaca did not abuse her discretion in determining Ordaz Perez meets the one-year constitutional residency requirement.

2. Election Code Eligibility Requirements

Fierro further asserts Ordaz Perez is ineligible to run for HD 79 under the Election Code. Yet again, we disagree.

Section 141.001 of the Texas Election Code sets the requirements to run for public elective office generally in Texas. Section 141.001 requires, among other things, that a candidate:

(a)(5) have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:

(A) for a candidate whose name is to appear on a general primary election ballot, the date of the regular filing deadline for a candidate’s application for a place on the ballot;

TEX.ELEC.CODE ANN. § 141.001(a)(5)(A).

Fierro contends Ordaz Perez is ineligible to run for HD 79 because under section 141.001(a)(5)(A), eligible candidates must have resided within the territorial boundaries of HD 79 for six months before the filing deadline. We acknowledge this residency requirement, in general, does apply to certain candidates. However, here the six-month residency requirement located at section 141.001(a)(5)(A) does not apply to an office for which the federal or state constitution or a statute outside the Election Code prescribes exclusive eligibility requirements. *See* TEX.ELEC.CODE ANN. § 141.001(c)(exempting such offices from general eligibility requirements imposed by section 141.001(a)).

The eligibility requirements for state representative are set by the Texas Constitution. *See* TEX.CONST. art. III, § 7. Because there is a statutory exemption from the general requirements of section 141.001(a) for offices with qualifications set by the Texas Constitution, the residency conditions imposed by section 141.001(a) do not apply to the office of state representative, and therefore, the constitutional standard alone controls. *Luna v. Blanton*, 478 S.W.2d 76, 78-79 (Tex. 1972)(Election Code's six-month pre-filing deadline residency requirements did not apply to office of state senator because that office's eligibility requirements were set by the Texas Constitution and Election Code contained an eligibility exemption for offices with eligibility requirements set by the Texas Constitution).

In short, Ordaz Perez is not required to show she resided in-district for at least six months prior to the primary election filing deadline, only that she began her residence within the district one year immediately preceding the general election as required by the Texas Constitution. Since Ordaz Perez meets the constitutional eligibility standard under TEX.CONST. art. III, § 7, Ordaz Perez is eligible to run for HD 79, and Chair Oaxaca did not err by declining to remove Ordaz

Perez from the ballot at Fierro's request.

III. CONCLUSION

Accordingly, relator Art Fierro's motion for emergency stay and petition for writ of mandamus are denied.

PER CURIAM

January 7, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.